

**Herman, Inc. and Oil, Chemical and Atomic Workers International Union, AFL-CIO, CLC, Local No. 8-366. Case 1-CA-28677**

January 28, 1992

**DECISION AND ORDER**

BY CHAIRMAN STEPHENS AND MEMBERS  
DEVANEY AND RAUDABAUGH

Upon a charge filed by the Union on September 17, 1991, the General Counsel of the National Labor Relations Board issued a complaint on October 29, 1991, against Herman, Inc., the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent has failed to file an answer.

On December 23, 1991, the General Counsel filed a Motion for Summary Judgment, with exhibits attached. On December 30, 1991, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on Motion for Summary Judgment**

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, "all the allegations in the complaint shall be deemed to be admitted to be true and shall be so found by the Board."

According to uncontroverted statements in and supporting exhibits attached to the General Counsel's Motion for Summary Judgment, the complaint was served by certified mail dated October 29, 1991, on the Respondent at its business address in Avon, Massachusetts. The Respondent failed to file an answer to the complaint within 14 days. On December 9, 1991, the General Counsel informed the Respondent, by certified mail, that if no answer was received by the Regional Office by the close of business on December 17, 1991, a Motion for Summary Judgment would be filed. The General Counsel mailed a copy of the letter to the Respondent's home address. A copy of the return receipt for service of the letter dated December 9, 1991, and sent to the Respondent's home address was returned to the Regional Office with the U.S.

Postal Service notation that it was unclaimed and marked "addressee unknown." The letter sent to the Respondent's business address was presumably not claimed by the Respondent since neither the certified letter nor the regular mail copy was returned to the Regional Office. To date, the Respondent has not filed an answer to the complaint or a request for an extension of time to file an answer.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.<sup>1</sup>

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

At all times material, the Respondent, a corporation, with an office and a place of business in Avon, Massachusetts, has been engaged in the operation of a warehouse and in the wholesale distribution of cosmetics and related products to retail establishments. During the calendar year ending December 31, 1990, the Respondent, in the course and conduct of these business operations, purchased and received at its Avon facility products, goods, and materials valued in excess of \$50,000 directly from points outside the Commonwealth of Massachusetts. In the absence of an answer, we find in accord with the complaint's allegations that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICES**

The following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All employees employed by the Respondent at its Avon, Massachusetts facility but excluding salesmen, guards, office clerical employees and supervisors as defined in the National Labor Relations Act.

Since on or about 1983, and at all times material herein, the Union has been the designated and recognized exclusive collective-bargaining representative of the employees in the above unit under Section 9(a) of the Act for purposes of collective bar-

<sup>1</sup> The Respondent's refusal or failure to claim certified mail should not serve to defeat the purposes of the Act. *Michigan Expediting Service*, 282 NLRB 210 fn. 6 (1986).

gaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective by its terms for the period November 19, 1990, to November 15, 1992.

Since on or about July 2, 1991, the Union, by letter, has requested the Respondent to furnish the Union with the following information:

- (a) a copy of the foreclosure-related documents, including but not limited to correspondence and documents showing the timing and terms of the Bank taking possession of Herman, Inc. assets;
- (b) the Closing describing the final terms of transfer of assets to Imperial;
- (c) confirmation of whether each unit employee received all accrued vacation pay and wages;
- (d) a list of which employees had health insurance premiums deducted from their checks during the weeks ending 6/14/91 and 6/21/91, the amounts, and a specification as to where the premiums were remitted;
- (e) a specification of all bills received for medical or health care expenses of unit employees, on a weekly basis (beginning on 5/1/91) and continuing to be supplemental until we agree to a cessation of the documentation; and
- (f) a specification of what payments were (or were not) made on each bill listed in (e), when it was paid, and to whom.

The information requested by the Union is necessary for and relevant to the Union's performance of its function as the exclusive collective-bargaining representative of the unit employees. Since on or about July 2, 1991, and continuing to date, the Respondent has failed and refused to furnish the Union the requested information.

We find that the Respondent, by its conduct, has failed and refused, and is failing and refusing, to bargain collectively with the Union and has thereby violated Section 8(a)(5) and (1).

#### CONCLUSIONS OF LAW

By failing and refusing to provide the requested information to the Union on and after July 2, 1991, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. This affirmative action will include ordering the Respondent to furnish the Union the information requested. Inasmuch as the record indicates that the Respondent may no longer be in business, we shall order the Respondent to mail signed copies of the notice to the Union and to all its bargaining unit employees employed on and after July 2, 1990. *Benchmark Industries*, 269 NLRB 1096, 1099 (1984).

#### ORDER

The National Labor Relations Board orders that the Respondent, Herman, Inc., Avon, Massachusetts, its officers, agents, successors, and assigns, shall

##### 1. Cease and desist from

(a) Refusing to bargain collectively with Oil, Chemical and Atomic Workers International Union, AFL-CIO, CLC, Local No. 8-366 by refusing to furnish it with information necessary for, and relevant to, the Union's performance of its function as the exclusive collective-bargaining representative of the following unit:

All employees employed by the Respondent at its Avon, Massachusetts facility but excluding salesmen, guards, office clerical employees and supervisors as defined in the National Labor Relations Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

##### 2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain collectively with the Union by furnishing the Union with the following relevant and necessary information:

- (a) a copy of foreclosure-related documents, including but not limited to correspondence and documents showing the timing and terms of the Bank taking possession of Herman, Inc. assets;
- (b) the Closing describing the final terms of transfer of assets to Imperial;
- (c) confirmation of whether each unit employee received all accrued vacation pay and wages;
- (d) a list of which employees had health insurance premiums deducted from their checks

during the weeks ending 6/14/91 and 6/21/91, the amounts, and a specification as to where the premiums were remitted;

(e) a specification of all bills received for medical or health care expenses of unit employees, on a weekly basis (beginning on 5/1/91) and continuing to be supplemental until we agree to a cessation of the documentation; and

(f) a specification of what payments were (or were not) made on each bill listed in (e), when it was paid, and to whom.

(b) Mail an exact copy of the attached notice marked "Appendix"<sup>2</sup> to the Union and to all employees who were employees in the appropriate bargaining unit on or after July 2, 1991. Copies of the notice, on forms provided by the Regional Director for Region 1, after being signed by the Respondent's authorized representative, shall be mailed immediately upon receipt, as directed above.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

<sup>2</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

## APPENDIX

### NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Oil, Chemical and Atomic Workers International Union,

AFL-CIO, CLC, Local No. 8-366, by refusing to furnish the Union with information necessary for, and relevant to, the Union's performance of its function as the exclusive collective-bargaining representative of the following unit:

All employees employed by the Employer at its Avon, Massachusetts facility but excluding salesmen, guards, office clerical employees and supervisors as defined in the National Labor Relations Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, furnish the Union with the following relevant and necessary information:

(a) a copy of foreclosure-related documents, including but not limited to correspondence and documents showing the timing and terms of the Bank taking possession of Herman, Inc. assets;

(b) the Closing describing the final terms of transfer of assets to Imperial;

(c) confirmation of whether each unit employee received all accrued vacation pay and wages;

(d) a list of which employees had health insurance premiums deducted from their checks during the weeks ending 6/14/91 and 6/21/91, the amounts, and a specification as to where the premiums were remitted;

(e) a specification of all bills received for medical or health care expenses of unit employees, on a weekly basis (beginning on 5/1/91) and continuing to be supplemental until we agree to a cessation of the documentation; and

(f) a specification of what payments were (or were not) made on each bill listed in (e), when it was paid, and to whom.

HERMAN, INC.